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Children's Commissioner Act 2003

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Commencement see section 2

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Social Development.

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1 Title

This Act is the Children's Commissioner Act 2003.

Part 1
Preliminary provisions

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purposes

The purposes of this Act are—

- (a) to continue, as the Children's Commissioner, the office of the Commissioner for Children and to state the Commissioner's functions and powers in a separate Act:
- (b) to re-enact the Commissioner's functions with modifications that are consistent with the Commissioner's primary role as an advocate for children:
- (c) to confer additional functions and powers on the Commissioner to give better effect in New Zealand to the United Nations Convention on the Rights of the Child:
- (d) to require the Commissioner to have regard to the Convention when carrying out the Commissioner's functions and powers:
- (e) to give the Commissioner express powers to obtain information and documents, and to apply for access to court records, in order to enhance the effectiveness of the Commissioner's investigative and inquiry functions:
- (f) to repeal Part 9 of the Children, Young Persons, and Their Families Act 1989.

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—

child, except in section 13, means a person under the age of 18 years

Commissioner means the Children's Commissioner (formerly known as the Commissioner for Children) continued by this Act

Convention means the United Nations Convention on the Rights of the Child, a copy of the English text of which is set out in Schedule 2

investigation includes an inquiry undertaken under section 12(1)(l)

Minister means, subject to any enactment, the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of the Oranga Tamariki Act 1989

officeholder means the individual who, for the time being, holds office as Commissioner.

- (2) Terms not defined in this Act but defined in the Oranga Tamariki Act 1989 have the same meaning in this Act.

Section 4(1) **fees framework**: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 4(1) **Minister**: amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 4(2): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

5 Act binds the Crown

This Act binds the Crown.

Part 2

Appointment, functions, and powers of Commissioner

Provisions relating to constitution and appointment of Commissioner

6 Office of Children's Commissioner continued

- (1) There continues to be a Commissioner called the Children's Commissioner, being the Commissioner who, immediately before the commencement of this Act, was known as the Commissioner for Children.
- (2) The Commissioner is—
- (a) a corporation sole; and
 - (b) a Crown entity for the purposes of section 7 of the Crown Entities Act 2004; and
 - (c) the board for the purposes of the Crown Entities Act 2004.
- (3) The Crown Entities Act 2004 applies to the Commissioner except to the extent that this Act expressly provides otherwise.
- (4) *[Repealed]*

Compare: 1989 No 24 ss 410(2), 421

Section 6(2): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 6(3): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 6(4): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

7 Appointment of Commissioner

(1) *[Repealed]*

(2) *[Repealed]*

(3) Before recommending the appointment of a Commissioner under section 28(1)(b) of the Crown Entities Act 2004, the Minister must—

(a) notify the vacancy or prospective vacancy in a manner sufficient to enable suitably qualified individuals to apply for appointment; and

(b) have regard to the desirability of consulting any organisations or persons that, in the opinion of the Minister, have a special interest in the functions of the Commissioner; including, without limitation, organisations representing children and children themselves.

(4) *[Repealed]*

(5) The appointment of a Judge as Commissioner does not affect the Judge's tenure of the judicial office or the Judge's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as a Judge (including those in relation to superannuation) and, for all purposes, the Judge's service as Commissioner is service as a Judge.

(6) *[Repealed]*

Section 7(1): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 7(2): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 7(3): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 7(4): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 7(6): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

8 Appointee must consent to appointment and disclose interests

[Repealed]

Section 8: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

9 Term of office

[Repealed]

Section 9: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

10 Removal of officeholder

[Repealed]

Section 10: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Functions, powers, and duties of Commissioner

11 Matters to which Commissioner must have regard in exercising functions or powers

In performing or exercising the Commissioner's functions or powers under this Act, the Commissioner must have regard to the following matters:

- (a) the Convention:
- (b) the principle that the Commissioner should give serious consideration to the views of children and take those views into account:
- (c) the principle that the Commissioner should recognise the diversity of children in New Zealand:
- (d) the principles stated in sections 4A and 5 of the Oranga Tamariki Act 1989, so far as they are applicable and with all necessary modifications.

Section 11(d): amended, on 1 July 2019, by section 37 of the Oranga Tamariki Legislation Act 2019 (2019 No 30).

Section 11(d): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

12 General functions of Commissioner

- (1) The general functions of the Commissioner are—
 - (a) to investigate any decision or recommendation made, or any act done or omitted (other than a decision, recommendation, or act to which section 13(1)(a) applies), in respect of any child in that child's personal capacity:
 - (b) to promote the establishment of accessible and effective complaints mechanisms for children and to monitor the nature and level of complaints:
 - (c) to raise awareness and understanding of children's interests, rights, and welfare:
 - (d) to raise awareness and understanding of the Convention:
 - (e) to undertake and promote research into any matter that relates to the welfare of children:

- (f) to act as an advocate for children's interests, rights, and welfare generally (except before any court or tribunal), and, in that regard, to advance and monitor the application of the Convention by departments of State and other instruments of the Crown:
 - (g) if there are issues in proceedings before any court or tribunal that relate to the Convention or to the interests, rights, or welfare of children generally, to present reports on such issues to the court or tribunal, at the request of—
 - (i) the court or tribunal; or
 - (ii) counsel representing any party to the proceedings; or
 - (iii) counsel representing any child who is the subject of the proceedings; or
 - (iv) counsel assisting the court or tribunal:
 - (h) to receive and invite representations from members of the public on any matter that relates to the welfare of children:
 - (i) to increase public awareness of matters that relate to the welfare of children:
 - (j) to promote, in relation to decisions that affect the lives of children,—
 - (i) the participation of children in those decisions; and
 - (ii) an approach to children's views that, in each case, gives due weight to those views in accordance with the age and maturity of the relevant child:
 - (k) to report, with or without request, to the Prime Minister on matters affecting the rights of children:
 - (l) to inquire generally into, and report on, any matter, including any enactment or law, or any practice or procedure, that relates to the welfare of children.
- (2) Except as expressly provided otherwise in this or another Act, the Commissioner must act independently in performing his or her statutory functions and duties, and exercising his or her statutory powers, under—
- (a) this Act; and
 - (b) any other Act that expressly provides for the functions, powers, or duties of the Commissioner (other than the Crown Entities Act 2004).

Compare: 1989 No 24 s 411(1)(a), (d), (e), (f), (g), (2)

Section 12(2): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

13 Functions in relation to Oranga Tamariki Act 1989

- (1) The Commissioner has the following functions in relation to the Oranga Tamariki Act 1989:

- (a) to investigate any decision or recommendation made, or any act done or omitted, under that Act in respect of any child or young person in that child's or young person's personal capacity:
 - (b) to monitor and assess—
 - (i) the policies and practices of the department; and
 - (ii) the policies and practices of any other person, body, or organisation that relate to the performance or exercise by the person, body, or organisation of a function, duty, or power under that Act or regulations made under that Act:
 - (c) to encourage the development, within the department, of policies and services that are designed to promote the welfare of children and young persons:
 - (d) on the Commissioner's own initiative or at the request of the Minister, to advise the Minister on any matter that relates to the administration of that Act or regulations made under that Act:
 - (e) to keep under review, and make recommendations on, the working of that Act.
- (2) In this section, **child** has the same meaning as in section 2(1) of the Oranga Tamariki Act 1989.

Compare: 1989 No 24 s 411(1)(a), (b), (c), (h), (i)

Section 13 heading: amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 13(1): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 13(2): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

14 Commissioner to develop means of consulting with children

- (1) The Commissioner must develop means of consulting with children from time to time for the purpose of ensuring the views of children are taken into account in the exercise or performance of the Commissioner's functions (other than the Commissioner's functions under section 12(1)(a) or section 13(1)(a)).
- (2) The Commissioner must, where practicable, consult with children, using the means developed under subsection (1), before the Commissioner makes any significant recommendation in the exercise or performance of the Commissioner's functions under section 12(1)(f), (g), (i), or (l) or under section 13(1)(d) or (e).

15 Capacity and powers

[Repealed]

Section 15: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

16 Duties

[Repealed]

Section 16: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Provisions relating to investigations

17 Commissioner's investigations must have regard to rights or interests and welfare of children

In conducting an investigation, the Commissioner must have regard to the question whether the rights or the welfare and interests of 1 or more children have been prejudiced.

18 Commissioner may not investigate courts or tribunals

- (1) Despite anything in this Act, the Commissioner may not investigate any decision or recommendation, or any act or omission, of a court or a tribunal.
- (2) If any matter is the subject of proceedings before a court or a tribunal, the Commissioner may not commence or (if the Commissioner has commenced an investigation) continue an investigation into the matter until the proceedings are finally determined.

19 Referrals of matters to certain statutory officers

- (1) If, in the course of conducting or proposing to conduct an investigation, the Commissioner considers that the subject matter of the investigation relates, in whole or in part, to a matter that is more properly within the scope of the functions of one of the statutory officers specified in subsection (4), the Commissioner must, without delay, consult with that officer in order to determine the appropriate means of dealing with the subject matter.
- (2) As soon as practicable after consulting with the officer concerned, the Commissioner must determine whether the subject matter should be dealt with, in whole or in part, under this Act.
- (3) If the Commissioner determines that the subject matter should be dealt with, in whole or in part, by one of the officers specified in subsection (4), the Commissioner must, without delay, refer the subject matter or, as the case requires, the appropriate part of the subject matter to that officer.
- (4) The statutory officers referred to in subsection (1) are—
 - (a) the Chief Commissioner under the Human Rights Act 1993;
 - (b) the chief executive of the department for the time being responsible for the administration of the Oranga Tamariki Act 1989;
 - (c) the Commissioner of Police;
 - (d) the Health and Disability Commissioner;

- (e) the Chief Ombudsman exercising jurisdiction under the Ombudsmen Act 1975;
- (f) the Independent Police Conduct Authority;
- (g) the Privacy Commissioner.

Compare: 1993 No 28 s 72

Section 19(4)(b): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 19(4)(f): amended, on 29 November 2007, by section 26 of the Independent Police Conduct Authority Amendment Act 2007 (2007 No 38).

20 Special powers to call for information or documents

- (1) If the conditions stated in subsection (2) are satisfied, the Commissioner may, by notice in writing, require any person—
 - (a) to provide the Commissioner or a specified employee of the Commissioner with any information the Commissioner requires; or
 - (b) to produce to the Commissioner or a specified employee of the Commissioner any document in the custody or under the control of that person, and to allow copies of, or extracts from, any such document to be made or taken; or
 - (c) to furnish to the Commissioner or to a specified employee of the Commissioner copies or extracts from documents in the custody or under the control of that person.
- (2) The conditions referred to in subsection (1) are that—
 - (a) the Commissioner believes, on reasonable grounds, that the exercise of the powers conferred by that subsection are necessary to enable the Commissioner to carry out an investigation; and
 - (b) the person to whom a notice under that subsection is to be given has failed to comply with a previous request to provide the Commissioner, within a reasonable time, with the information or document or extract required by the notice; and
 - (c) the Commissioner believes, on reasonable grounds, that—
 - (i) it is not reasonably practicable to obtain the information or document from another source; or
 - (ii) for the purposes of the investigation, it is necessary to obtain the information or document to verify or refute information obtained from another source.

21 Compliance with requirement to provide information or document

- (1) A person to whom a notice under section 20 is given must, without charge, comply with the requirement stated in the notice in the manner and within a

period (being not less than 20 working days after the notice is given to the person) specified in the notice.

- (2) Subsection (1) does not require a person to provide any information or produce any document that would be privileged in a court of law.
- (3) Every person commits an offence, and is liable on conviction to a fine not exceeding \$2,000, who, when required to comply with a notice given under section 20,—
 - (a) refuses or fails without reasonable excuse to comply with the notice; or
 - (b) knowingly or recklessly provides information that is false or misleading in any material particular.

Section 21(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

22 Commissioner and staff must maintain secrecy

- (1) The Commissioner and every employee of the Commissioner must maintain secrecy in respect of all matters that come to the knowledge of the Commissioner or the employee in the course of any investigation.
- (2) Despite anything in subsection (1), the Commissioner or any employee of the Commissioner acting with the authority of the Commissioner may disclose any matter that, in the Commissioner's opinion, ought to be disclosed for the purposes of giving effect to—
 - (a) this Act; or
 - (b) the Commissioner's obligations under any other enactment; or
 - (c) information privacy principle 6 of the Privacy Act 1993.
- (3) The power conferred by subsection (2)(a) does not extend to—
 - (a) any matter that might prejudice—
 - (i) the security, defence, or international relations of New Zealand (including New Zealand's relations with the Government of any other country or with any international organisation); or
 - (ii) any interest protected by section 7 of the Official Information Act 1982; or
 - (iii) the maintenance of the law, including the prevention, investigation, or detection of offences; or
 - (b) any matter that might involve the disclosure of the deliberations of Cabinet; or
 - (c) any information, answer, document, paper, or thing obtained by the Commissioner by reason only of compliance with a requirement made under section 20(1).

- (4) The power conferred by subsection (2)(c) is subject to sections 27 to 29 of the Privacy Act 1993.

Compare: 1993 No 28 s 116

23 Consultation with other statutory officers

- (1) Despite anything in section 22, the Commissioner may consult with any of the statutory officers specified in subsection (3) about any matter that relates to the functions of the Commissioner, including (without limitation) consultation—
- (a) for the purposes of making a determination under section 19:
 - (b) in relation to any matter that arises out of, or in the course of, an investigation conducted by the Commissioner:
 - (c) in relation to any matter that relates to the interests, rights, or welfare of children, whether or not the matter arises out of an investigation conducted by the Commissioner.
- (2) For the purposes of any consultation under subsection (1), the Commissioner may disclose to the officer concerned any information the Commissioner considers necessary for that purpose.
- (3) The statutory officers referred to in subsection (1) are—
- (a) the Chief Commissioner under the Human Rights Act 1993:
 - (b) the chief executive of the department for the time being responsible for the administration of the Oranga Tamariki Act 1989:
 - (c) the Commissioner of Police:
 - (d) the Health and Disability Commissioner:
 - (e) the Chief Ombudsman exercising jurisdiction under the Ombudsmen Act 1975:
 - (f) the Independent Police Conduct Authority:
 - (g) the Privacy Commissioner.

Compare: 1993 No 28 s 117

Section 23(3)(b): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 23(3)(f): amended, on 29 November 2007, by section 26 of the Independent Police Conduct Authority Amendment Act 2007 (2007 No 38).

24 Access to court records

- (1) If the Commissioner believes on reasonable grounds that access to a record of a court is required for an investigation, the Commissioner may apply to the court to inspect the record.
- (2) An application under subsection (1) is dealt with in accordance with the applicable rules of court governing the inspection of court records.
- (3) This section does not limit—

- (a) section 15; or
- (b) any other enactment that—
 - (i) enables the Commissioner to access court records; or
 - (ii) restricts access to court records.

25 Commissioner must not make adverse comment unless opportunity to be heard is given

Despite anything in this Act or the Crown Entities Act 2004, the Commissioner must not, in any report or statement made under this Act, make any comment that is adverse to a person if the Commissioner has not given the person an opportunity to be heard.

Compare: 1989 No 24 s 414

Section 25: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

26 Commissioner may regulate procedure for investigations

The Commissioner may regulate the procedure for any investigation under this Act in any manner, not inconsistent with this Act, that the Commissioner thinks fit.

Immunities and privileges

27 Proceedings privileged

- (1) *[Repealed]*
- (2) No civil or criminal proceedings may be brought against the officeholder or a former officeholder or against a person who is or has been an employee of the Commissioner for anything done or omitted in the course of the exercise or intended exercise of functions under this Act unless it is shown that the person concerned acted in bad faith.
- (3) Neither the officeholder nor a former officeholder nor a person who is or has been an employee of the Commissioner may be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything that comes to the knowledge of the person concerned in the exercise of functions or powers under this Act.
- (4) Nothing in subsection (2) or subsection (3) applies in respect of proceedings for—
 - (a) an offence against section 78, 78AA(1), 78A(1), 105, 105A, or 105B of the Crimes Act 1961; or
 - (b) the offence of conspiring to commit an offence against section 78, 78AA(1), 78A(1), 105, 105A, or 105B of the Crimes Act 1961; or
 - (c) the offence of attempting to commit an offence against section 78, 78AA(1), 78A(1), 105, 105A, or 105B of the Crimes Act 1961.

- (5) Nothing in subsection (3) applies to any report made by the Commissioner to a court under section 12(1)(g).
- (5A) Sections 122 to 126 of the Crown Entities Act 2004 apply as if the conduct for which a person may be indemnified or insured under those sections were conduct that is covered by the protection from liability in this section.
- (5B) This section contains an exception to section 121 of the Crown Entities Act 2004.
- (6) Anything said or any information supplied or any document, paper, or thing produced by a person in the course of an investigation by the Commissioner under this Act is privileged in the same manner as if the investigation were a proceeding in a court.
- (7) For the purposes of clause 3 of Part 2 of Schedule 1 of the Defamation Act 1992, any report made by the Commissioner under this Act is to be taken to be an official report.

Section 27(1): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 27(4)(a): amended, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 27(4)(b): amended, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 27(4)(c): amended, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 27(5A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 27(5B): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Matters of administration

28 Annual report

[Repealed]

Section 28: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

29 Money to be appropriated for purposes of this Act

[Repealed]

Section 29: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

30 Provisions applying to Commissioner

The provisions in Schedule 1 apply to the Commissioner.

Part 3

Transitional and miscellaneous provisions

31 Continuation of office, appointment of Commissioner, and employment of employees

- (1) The office continued by section 6 is the office of Commissioner for Children as established by section 410 of the Oranga Tamariki Act 1989, and, accordingly, every reference to the Commissioner for Children in an enactment or document made before the commencement of this Act is a reference to the Children's Commissioner continued by section 6.
- (2) On the commencement of this Act, the person who, immediately before that commencement, held office as Commissioner for Children under the Oranga Tamariki Act 1989 is to be taken to have been appointed as Commissioner under this Act—
 - (a) for a term that, immediately before that commencement, represented the remainder of the person's term as Commissioner for Children; and
 - (b) subject to the conditions of employment, determined under section 417 of that Act, that applied to the person immediately before that commencement; and
 - (c) subject to any determination made under section 47 of the Crown Entities Act 2004 (with any such determination prevailing if, and to the extent that, it is more favourable to the person than any of the conditions of employment referred to in paragraph (b)).
- (3) The Remuneration Authority is not obliged to make a determination under section 47 of the Crown Entities Act 2004 of the salary and allowances of the person to whom subsection (2) applies before the time that that person's salary and allowances would have been next reviewed under the conditions of employment referred to in subsection (2)(b).
- (4) This Act does not affect the employment of any person who, immediately before the commencement of this Act, was an employee of the Commissioner for Children.

Section 31(1): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 31(2): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 31(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 31(2)(c): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 31(3): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

32 Application of Act to matters commenced under Oranga Tamariki Act 1989

- (1) The Commissioner may continue or complete any act, matter, or thing commenced by the Commissioner for Children under the Oranga Tamariki Act 1989 but not completed on the commencement of this Act.
- (2) The provisions of this Act apply with all necessary modifications to the continuation or completion of any act, matter, or thing referred to in subsection (1).

Section 32 heading: amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 32(1): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

33 Review of Commissioner's operations and performance

[Repealed]

Section 33: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

34 Power to request information in connection with review

[Repealed]

Section 34: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

35 Good reasons for refusing to supply requested information

[Repealed]

Section 35: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

36 Convention set out in Schedule 2 for information and reference only

- (1) The Convention is set out in Schedule 2 for public information and reference purposes only.
- (2) For the avoidance of doubt, the inclusion of the text of the Convention in this Act does not affect the legal status of the Convention.

37 Consequential amendments

The enactments specified in Schedule 3 are amended in the manner indicated in that schedule.

Schedule 1 Provisions applying to Commissioner

s 30

Terms and conditions of appointment

1 Concurrent offices and disclosure of interests

[Repealed]

Schedule 1 clause 1: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

2 When officeholder has private or business interest

[Repealed]

Schedule 1 clause 2: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

3 Consequences of private or business interest or matter

[Repealed]

Schedule 1 clause 3: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

4 Resignation

[Repealed]

Schedule 1 clause 4: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

5 Salaries and allowances

[Repealed]

Schedule 1 clause 5: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

6 Superannuation or retiring allowances

- (1) For the purpose of providing a superannuation fund or retiring allowance for the officeholder, sums by way of subsidy or contribution may be paid into any retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013).
- (2) Despite anything in this Act, any person who, immediately before being appointed as the Commissioner or as an employee of the Commissioner, is a contributor to the Government Superannuation Fund under Part 2 or Part 2A of the Government Superannuation Fund Act 1956 is considered, for the purposes of that Act, to be employed in the Government service so long as that person continues to hold office as the Commissioner or as an employee of the Commissioner, and that Act applies to that person in all respects as if service as or for the Commissioner were Government service.

- (3) Subject to the Government Superannuation Fund Act 1956, nothing in subclause (2) entitles a person to become a contributor to the Government Superannuation Fund after the person has ceased to be a contributor.
- (4) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with subclause (2), to a person who holds office as the Commissioner or as an employee of the Commissioner and is a contributor to the Government Superannuation Fund, the term **controlling authority**, in relation to any such person, means the Commissioner.

Schedule 1 clause 6(1): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Schedule 1 clause 6(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Employees

[Repealed]

Heading: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

7 Employees

[Repealed]

Schedule 1 clause 7: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

8 Chief executive

[Repealed]

Schedule 1 clause 8: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

9 Commissioner to be good employer

[Repealed]

Schedule 1 clause 9: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

10 Application of certain Acts to Commissioner and employees

[Repealed]

Schedule 1 clause 10: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Delegations

11 Ability to delegate

- (1) Despite section 73 of the Crown Entities Act 2004, the Commissioner may delegate any of the functions and powers of the Commissioner, either generally or specifically, only to—
- (a) an employee of the Commissioner; or

- (b) any other person or persons approved by the Minister; or
 - (c) any class of persons comprised of any of the persons listed in paragraphs (a) and (b).
- (2) The Commissioner may not delegate—
- (a) the power to call for information and documents under section 20; or
 - (b) *[Repealed]*
 - (c) the power to appoint attorneys under clause 15.
- (3) Despite subclause (2), the Commissioner may, with the prior approval of the Minister, delegate to any employee of the Commissioner 1 or more of the powers referred to in that subclause.
- (4) A delegate may exercise a power delegated under subclause (3) only during a vacancy in the office of the Commissioner or during the absence for any reason of the Commissioner.

Schedule 1 clause 11(1): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 1 clause 11(2)(b): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

12 Effect of delegation

[Repealed]

Schedule 1 clause 12: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Transactions

[Repealed]

Heading: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

13 Services for Commissioner

[Repealed]

Schedule 1 clause 13: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

14 Method of contracting

[Repealed]

Schedule 1 clause 14: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

15 Attorneys

[Repealed]

Schedule 1 clause 15: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

16 Presumptions and saving of certain transactions

[Repealed]

Schedule 1 clause 16: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Financial matters

[Repealed]

Heading: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

17 Funds of Commissioner

[Repealed]

Schedule 1 clause 17: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

18 Bank accounts

[Repealed]

Schedule 1 clause 18: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

19 Investment of money

[Repealed]

Schedule 1 clause 19: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

20 Commissioner must not borrow without consent of Minister of Finance

[Repealed]

Schedule 1 clause 20: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

21 Commissioner must not hold shares without consent of Minister of Finance

[Repealed]

Schedule 1 clause 21: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

22 Auditor-General is auditor of Commissioner

[Repealed]

Schedule 1 clause 22: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

23 Exemption from income tax

The income of the Commissioner is exempt from income tax.

Schedule 2

United Nations Convention on the Rights of the Child

s 36

Convention on the Rights of the Child

Preamble

The States Parties to the present convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognising that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognised in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in Articles 23 and 24), in the International Covenant on Economic, Social and Cul-

tural Rights (in particular in Article 10) and in the statutes and relevant instruments of specialised agencies and international organisations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”,

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognising that, in all countries in the world, there are children living in exceptionally difficult conditions and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognising the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

Part I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

Article 6

1. States Parties recognise that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present Article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under Article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and

direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under Article 9, paragraph 2, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognised in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognise the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of Article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the pri-

mary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, *inter alia*, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity of a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorised only by competent authorities who determine, in accordance with applicable law and procedures and on the

- basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognise that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
 - (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
 - (d) Take all appropriate measures to ensure that, in inter-country adoption the placement does not result in improper financial gain for those involved in it;
 - (e) Promote, where appropriate, the objectives of the present Article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organisations or non-governmental organisations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognise the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which

application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognising the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present Article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.
4. States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;

- (f) To develop preventative health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
 4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realisation of the right recognised in the present Article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognise the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognise for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realisation of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present convention.
3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.

2. No part of the present Article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present Article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, or profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present Article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present Article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of nar-

cotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the

legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognised as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

- i To be presumed innocent until proven guilty according to law;
 - ii To be informed promptly and directly of the charges against him or her, and, if appropriate through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - iii To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular taking into account his or her age or situation, his or her parents or legal guardians;
 - iv Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - v If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - vi To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - vii To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and, in particular:
 - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realisation of the rights of the child and which may be contained in:

- (a) The law of a State party; or

- (b) International law in force for that State.

Part II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realisation of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of ten experts of high moral standing and recognised competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State

- Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.
 9. The Committee shall elect its officers for a period of two years.
 10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.
 11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.
 12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognised herein and on the progress made on the enjoyment of those rights:
 - (a) Within two years of the entry into force of the Convention for the State Party concerned;
 - (b) Thereafter every five years.
2. Reports made under the present Article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present Article, repeat basic information previously provided.
4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

- (a) The specialised agencies, the United Nations Children's Fund and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialised agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialised agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
- (b) The Committee shall transmit, as it may consider appropriate, to the specialised agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;
- (c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;
- (d) The Committee may make suggestions and general recommendations based on information received pursuant to Articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

Part III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present Article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then

inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorised thereto by their respective Governments, have signed the present Convention.

Schedule 3

Consequential amendments

s 37

Children, Young Persons, and Their Families Act 1989 (1989 No 24)

Amendment(s) incorporated in the Act(s).

Children, Young Persons, and Their Families (Residential Care) Regulations 1996 (SR 1996/354)

Amendment(s) incorporated in the regulations.

Family Courts Rules 2002 (SR 2002/261)

Amendment(s) incorporated in the rules.

Health and Disability Commissioner Act 1994 (1994 No 88)

Amendment(s) incorporated in the Act(s).

Ombudsmen Act 1975 (1975 No 9)

Amendment(s) incorporated in the Act(s).

Public Finance Act 1989 (1989 No 44)

Amendment(s) incorporated in the Act(s).

Remuneration Authority Act 1977 (1977 No 110)

Amendment(s) incorporated in the Act(s).

Reprints notes

1 *General*

This is a reprint of the Children's Commissioner Act 2003 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Oranga Tamariki Legislation Act 2019 (2019 No 30): Part 2 subpart 3

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31): section 149

Intelligence and Security Act 2017 (2017 No 10): section 335

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Criminal Procedure Act 2011 (2011 No 81): section 413

Independent Police Conduct Authority Amendment Act 2007 (2007 No 38): section 26

Crown Entities Act 2004 (2004 No 115): section 200